

REMARKS

Claims 26, 28-33, 35-38 and 42-54 are pending in this application. Claims 26, 49-51, 53 and 54 are independent claims. Claims 26, 35, 38, 49, 50 and 51 have been amended, and new claims 53 and 54 have been added, by this Amendment.

The Office Action dated June 8, 2007 rejects claims 26, 28-33, 35-38 and 42-52 under 35 USC 112, first and second paragraphs. The Office Action also rejects claims 26, 28-33, 35-38 and 42-52 under 35 USC 103(a) as being obvious in view of prior art.

Claim Amendments

The Office Action was improperly made final. A Petition to Withdraw Finality has been filed. Applicant has made amendments to the claims in this Amendment to improve the language of the claims. The amendments are not intended to overcome any of the rejections. New claims 53 and 54 correspond generally to claims 50 and 51 respectively, except they have been amended to remove the “means plus function” and “step plus function” language. It is respectfully requested that the claim amendments be entered.

Rejections under 35 USC 112

The grounds for the rejections of the claims under 35 USC 112, first and second paragraphs, are set forth in parts 1-4 on pages 2-3 of the Office Action. Specifically, the claims are rejected because the terms “packet” and “size of packet” are alleged to be unclear, and not described in such a way in the specification so as to enable one of ordinary skill in the art to make and/or use the claimed invention.

First, the rejection under 35 USC 112, first paragraph, states that the specification and claims use the term “packet” in a different manner from what is already established as its meaning in the field of the invention. Even assuming for the sake of argument only that the specification does in fact use the term “packet” in a different manner from what is already established as its meaning in the field of the invention, that is not improper and is not cause for the claims to be rejected under 35 USC 112, first paragraph.

Secondly, applicant respectfully submits that the term “packet” is clearly and concisely defined with respect to the specification. The rejection improperly ignores parts of the specification. For example, on page 1, the specification states the following:

“The term ‘packet’ used herein refers generally to the packet of data which is to be transferred using the allocated communication resources. Typically, the packets comprise data generated by users and/or applications. Thus, examples of packets include users data documents, such as zip files and emails, digitised speech, video and other similar types of data files.” (underlining added to show sentences ignored by rejection)

Thus, there is a rather plain and direct indication of the term in the specification that is not addressed and considered by the rejections. It cannot be said that the use of the term is confusing when the specification directly and clearly states how the term is being used.

Furthermore with respect to the “size of the packet”, the description on page 9 states the following:

“Typically, the size of the packet used in the allocation is the size of the data file generated at the application level, for example that of the original application generated data document. Therefore the packet size is the size of the packet received by the protocol stack PS from the highest application level.” (underlining added to show parts ignored by rejection)

Thus, there is support for the recitations in the claims that the allocation of one of the communication resources is based on the size of the at least one packet. The specification is clearly and concisely describing the claimed invention where the resource allocation is defined by the size of the data generated by users and/or applications.

Obviousness Rejection

The grounds for the obviousness rejection of the claims are set forth in part 6 on pages 3-5 of the Office Action. Specifically, the claims are rejected as being obvious in view of U.S. Patent No. 6,347,091 issued to Wallentin et al. No other references are relied upon in the rejection. Applicant respectfully traverses the rejection on the grounds that it fails to establish a prima facie case that the prior art teaches each and every one of the combination of features recited in the rejected claims.

The Wallentin patent discusses a mobile communication system providing packet data services where packet data connections are established between a mobile station and

a radio access network. In particular, the patent discusses the type of radio channel that should be bearing the connection over the radio interface and determines, from a measured value, the best type of channel to carry the future packet data to be sent over the packet data connection. See Fig. 4.

However, as acknowledged in the rejection, Fig. 5 and col. 6, line 27, to col. 7, line 8, of the patent teach that the optimal channel type is dynamically/adaptively determined and allocated based on a single relatively simple parameter, such as the amount of data currently stored in a connection queue. Thus, the patent effectively teaches monitoring the channel buffer and then selecting which channel to use based on the fullness of the buffer.

The method in the Wallentin patent is flawed in that it requires a monitoring of the buffer or queue before any allocation can be performed. This process may function adequately for regular flow rates of traffic or with data flows with slow fluctuation. However, the threshold value could be swiftly swamped by bursty flow rates.

The claimed invention overcomes the buffer overflow problem in the Wallentin patent by determining allocation from the packet source directly. Thus, large packets may be allocated dedicated channels and may not be placed into a common channel queue until a time when the buffer signals a problem. The claimed invention also has the advantage that it can be implemented with lower signaling overhead and less hardware time when compared with the method discussed in the Wallentin patent.


The obviousness rejection acknowledges that there is no suggestion in the Wallentin patent (the only reference relied upon in the rejection) of information relating to the size of the at least one packet to be transferred provided to a network element performing the allocation, where the information relating to the size of the packet is transferred as a service primitive parameter. However, it asserts that: 1) it was "well known in the art" that the parameter information could be communicated in two different ways - transferring it as a service primitive parameter, or as information contained in a PDC; and 2) it would have been obvious for one of ordinary skill in the art at the time of the invention "to implement the teaching of Wallentin by adopting either way of transferring the information regarding the amount of data". Applicant respectfully traverses both assertions.

The first assertion is simply lacking any factual or evidentiary basis. The rejection does not rely upon any reference other than the Wallentin patent. The Patent Office has the burden of establishing a prima facie case of obviousness, which it has not done. If the facts asserted were indeed well known in the prior art, then it should be easy to cite and apply a reference showing this to be the case. If the assertion is an attempt to take Official Notice, then Applicant hereby challenges such Official Notice.

Secondly, even accepting that these are well known in the art, there is simply no suggestion, motivation or other rationale provided in the obviousness rejection for the proposed modification of the Wallentin patent. Having acknowledged that the Wallentin patent does not contain all of the features recited in the claims, the rejection simply asserts that it would be obvious to modify the Wallentin patent to include the missing features. A claim is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. See KSR International Co. v. Teleflex Inc., ____ US ____ (2007).

The Commissioner is hereby authorized to charge the fees required for the additional two independent claims, and any additional fee under 37 C.F.R. §§1.16 and 1.17, which may be required for the consideration of this communication or to retain the pendency of the application, to Deposit Account No. 10-0100 (NOKIA.4008US).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert M. Bauer", is written over a horizontal line.

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